**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Chapter VIII, Rule 32(2) (b)
Description of case

**Writ Petition No. 215 of 2005 (S/B)**

Date of decision: 7th December, 2005

A.F.R. (Approved for Reporting)

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Not Approved for Reporting

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Writ Petition No. 215 of 2005 (S/B)**

1. Dr. Ram Kishor Bhatt,
   S/o Sri Mahimanand Bhatt,
   R/o Chham Post Office Chamm,,
   District Tehri Garhwal.
2. Dr. Ranjana Uniyal,
   D/o. Sri K.P. Uniyal,
   R/o 48, Shastri Enclave, Haridwar Road,
   Dehradun,
3. Dr. Hari Mohan Tripathi,
   S/o Sri R.N. Tripathi,
   R/o Eqta Enclave, Street No. 2,
   Nehru Gram Road,
   Dehradun. …… Petitioners

Versus

1. State of Uttaranchal,
   through Secretary, Medical and Health,
   Govt. of Uttaranchal, Dehradun.
2. Director,
   Ayurvedic and Unani Services,
   Uttaranchal, Dehradun. …… Respondents

Mr. L.P. Naithani, Senior Advocate assisted by Mr. B.D. Upadhyaya, Advocate for the petitioners.
Mr. B.D. Kandpal, Standing Counsel for the State of Uttaranchal.

**JUDGMENT**

**Coram: Hon. Cyriac Joseph, C.J.**
**Hon. Rajesh Tandon, J.**

**CYRAC JOSEPH, C.J. (Oral)**

1. The second respondent – Director, Ayurvedic and Unani Services, Uttaranchal – issued an advertisement on 18.12.2004 inviting applications for 175 posts of Ayurvedic Doctors to be appointed on contract basis on a fixed amount of Rs. 12,000/- per month as honorarium. The appointment was to be for a period of one year or till regular candidates selected by the Public Service Commission joined duty, whichever was earlier. The qualifications for the post, as given in the advertisement, were the following:

A. Graduation in Ayurved form Universities established by law in Uttar Pradesh / Uttaranchal. Or, 5 years' degree of the Indian Medical Counsel, Uttar Pradesh.

B. Registration with the Indian Medical Counsel, Uttar Pradesh as Vaidya, and

C. Professional experience of six months in Ayurvedic, Unani or Allopathic Hospitals or dispensaries in the State.

Later, a corrigendum dated 09.02.2005 was issued stating that the educational qualification shall be the following:

> "Five years' degree in Ayurved from any University established by law or Indian Medical Council, Uttar Pradesh / Uttaranchal or any other State or Board or Faculty which is liable to be registered under the United Province Indian Medical Act, 1939."

In the corrigendum, it was also stated that original residents of Uttaranchal would be given preference. It was specifically stated in the advertisement dated 18.12.2004 that the selection would be made on the basis of interview of a Selection Committee appointed by the Government.

2. In response to the above-mentioned advertisement, the petitioners applied for appointment as Ayurvedic Doctors. They were called for interview. But their names were not included either in the list of selected candidates or in the waiting list. Thereupon, the petitioners filed this writ petition praying for the following reliefs:

> "a. a writ, order or direction in the nature of certiorari to call for the record of the case and quash the appointments, if any, made on the basis of the selection made by the Selection Committee constituted by the Government to appoint Ayurvedic Doctors on contract basis.
>
> b. a writ, order or direction in the nature of mandamus directing the respondents to

make appointments on the vacant posts of Ayurvedic Doctors in accordance with law.

c. Any other writ, order or direction which this Hon'ble High Court may deem fit and proper in the facts and circumstances of the case.

d. award cost of the petitioner to the Petitioner."

3. The main contention of the petitioners is that the process of selection was illegal and defective, as the selection was made exclusively on the basis of interview. It is also contended that the interview was a mere farce to facilitate selection of candidates in an arbitrary manner without following any reasonable criteria. Learned counsel for the petitioners relies on the decisions of the Supreme Court in **Satpal and others Vs State of Haryana and others** reported in **1995 Supp (1) SCC 206** and **Inder Parkash Gupta Vs State of J&K and others** reported in **(2004) 6 SCC 786.**

4. A counter affidavit has been filed on behalf of the respondents. It is stated in the counter affidavit that the criteria for selection were fixed by the Selection Committee in its meeting held on 11.05.2005. A copy of the minutes of the said meeting has been produced as Annexure CA2. The said minutes clearly show that the only criterion for selection was the performance in the interview and among the candidates who obtained equal marks, higher ranks would be given to the residents of Uttaranchal. Accordingly to the respondents, appointments were made according to the rank in the merit list and the petitioners were not appointed, as they were not included in the merit list. It is also stated that, though about 2600 candidates applied for the post, only 1387 applicants appeared for the interview. The interview was conducted by two Interview Boards constituted by the Government. One Interview Board was presided over by the Director, Ayurvedic and Unani Services and the other Interview Board was presided over by Joint Secretary, Medical Health and Family Welfare Department, Government of Uttaranchal. The respondents have denied the allegation of the petitioners that on an average only two minutes were available for interviewing one candidate.

According to the respondents, only 100 candidates were called for interview every day and all the 100 candidates did not turn up on the day of interview and the interview continued till the last candidate present also was interviewed, irrespective of any time limit. It is further stated in the counter affidavit that out of the 175 candidates selected, only 164 candidates have joined the post and 11 posts are lying vacant. The Government proposes to fill up the vacant 11 posts by appointing candidates from the waiting list.

5. While admitting the writ petition, no interim order staying the appointments was passed. However, it was made clear that any appointment made pursuant to the impugned selection would be provisional and subject to further orders from the Court. It is not disputed that at present 11 posts remain vacant.

6. The basis question that arises for consideration is whether the selection made exclusively on the basis of performance in the interview is vitiated or not. Admittedly, there were a large number of candidates appearing in the interview and the time available for interviewing a candidate was very limited. Annexure CA2 minutes of the Selection Committee indicate that apart from the performance in the interview, no other criterion was followed by the Selection Committee for making the selection. In other words, the Selection Committee did not give any weightage or marks taking into account the marks or grade obtained in the qualifying examination or the length of professional experience or higher academic qualification or other similar factors reflecting merit of a candidate. A selection ignoring such factors and exclusively based on performance in the interview is neither proper nor desirable. Such a selection is not proper because performance in the interview cannot be the sole criterion for determining the relative merit of candidates. Relative merit can be determined only with reference to all the factors which reflect the merit of a candidate. Performance in the interview is only one of such factors. Such a selection is not desirable because it

facilitates arbitrariness in the selection and provides opportunity for promoting favoured candidates by awarding excessive marks disproportionate to their merit. Every selection to a civil post/ public office should be fair and just. A selection can be said to be fair and just only when the chances for arbitrariness and favoritism are minimized by following some tangible and intelligible criteria for selection. The impugned selection was admittedly on the basis of performance in the interview only. Hence, the said selection was arbitrary and unjust and is liable to be quashed in the normal circumstances. In taking the above view, we are supported by the decisions of the Hon'ble Supreme Court in **Satpal and others Vs State of Haryana and others** (supra) and **Inder Parkash Gupta Vs State of J&K and others** (supra).

7. However, since the petitioners participated in the selection knowing fully well that the selection was going to be made exclusively on the basis of the performance in the interview and since the 164 selected candidates who were appointed by the Government are not parties to the writ petition and since the appointment in question is only a contract appointment for a limited period, we are not inclined to quash the selection or the appointments already made. But if the Government proposes to fill up the 11 posts lying vacant, appointments shall be made only on the basis of a fresh selection from among the applicants who had applied in response to Annexure 1 advertisement and had participated in the interviews already conducted but have not been appointed. Such selection shall be made in a fair and just manner indicated in this judgment.

8. The writ petition is disposed of as above.

**(Rajesh Tandon, J.)** **(Cyriac Joseph, C.J.)**
**07.12.2005** **07.12.2005**

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